UNITED STATES PATENT AND TRADEMARK OFFICE

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1   UNITED STATES PATENT AND TRADEMARK OFFICE
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3   _____
4   BEFORE THE BOARD OF PATENT APPEALS
5   AND INTERFERENCES
6   _____
7
8   *Ex parte* PHIL WYATT
9   _____
10
11   Appeal 2008-4061
12   Application 09/544,508
13   Technology Center 3600
14   _____
15
16   Decided: October 30, 2008
17   _____
18
19   *Before* WILLIAM F. PATE, III, ANTON W. FETTING and DANIEL S.
20   SONG, *Administrative Patent Judges.*
21
22   SONG, *Administrative Patent Judge.*
23
24   DECISION ON APPEAL
25
26   STATEMENT OF THE CASE
27   The Appellant appeals under 35 U.S.C. § 134 (2002) from a Final
28   Rejection of claims 1-10 and 14-19. Claims 11-13 and 20 have been
29   withdrawn from consideration. We have jurisdiction under 35 U.S.C. § 6(b)
30   (2002).

1   The Appellant claims a method and a system for providing bed

2 availability information of healthcare facilities such as nursing homes,

3 retirement homes and the like. The claimed invention identifies a matching

4 healthcare facility that provides the type of medical care needed by the

5 patient and also has a bed available to receive the patient.

6   Independent claims 1 and 14 read as follows:

7   1.   A method for providing bed availability information to a
8   user wherein the user identifies an available bed for a patient
9   and further wherein the bed availability information includes
10   information on beds at a plurality of healthcare facilities
11   wherein the plurality of healthcare facilities receives the patient
12   based on the bed availability at one of the plurality of
13   healthcare facilities, the method comprising the steps of:
14   providing a computer network;
15   providing a database connected to the computer network;
16   inputting bed availability information for a plurality of
17   healthcare facilities wherein each of the plurality of healthcare
18   facilities have beds for providing a plurality of types of medical
19   care and further wherein the bed availability information is
20   input into the database and is accessible by the computer
21   network;
22   providing a first access to the database for determining
23   the available bed for the patient by the user of the database;
24   inputting a medical condition of the patient into the
25   database;
26   searching the bed availability information for the
27   plurality of healthcare facilities in the database;

1   matching the medical condition of the patient in the
2   database to one of the types of medical care to obtain the bed
3   availability information of the plurality of healthcare facilities
4   based on each of the plurality of healthcare facilities having
5   beds for providing one of the types of medical care to treat the
6   medical condition of the patient; and
7   determining the available bed in the plurality of
8   healthcare facilities for the patient with the medical condition
9   from the bed availability information based upon the medical
10   condition of the patient in the database.
11
12   14.   A system for storing and accessing bed availability
13   information to a user wherein the bed availability information
14   includes information for a plurality of healthcare facilities
15   wherein each of the plurality of healthcare facilities has a
16   plurality of beds and receives a patient if a bed is available, the
17   system comprising:
18   a computer network;
19   a database associated with the computer network;
20   means for inputting bed availability information of a
21   plurality of healthcare facilities into the database;
22   means for accessing the bed availability information and
23   retrieving the bed availability information from the database via
24   the computer network;
25   means for inputting information of the patient into a form
26   via the computer network wherein the information of the patient
27   is stored in the database;
28   means for searching the database for the bed availability
29   information of the plurality of healthcare facilities;
30   means for comparing the information of the patient in the
31   database to the bed availability information in the database to
32   obtain each of the plurality of healthcare facilities for treating
33   the patient; and

1   means for determining if a bed in the plurality of beds at
2   each of the plurality of healthcare facilities for treating the
3   patient is available based on the information of the patient in
4   the database.

5

6   The prior art relied upon by the Examiner in rejecting the claims is:

7	Stanis	4,135,241	Jan. 16, 1979
8	Bruno	US 6,289,088 B1	Sep. 11, 2001
9	Øhrn	US 6,356,874 B1	Mar. 12, 2002

10

11   The Examiner rejected claims 1, 2, 4-9, 14-17 and 19 under 35 U.S.C.

12   § 103(a) as unpatentable over Øhrn and Stanis.

13   The Examiner also rejected claims 3, 10 and 18 under 35 U.S.C.

14   § 103(a) as unpatentable over Øhrn, Stanis and Bruno.

15   We AFFIRM-IN-PART.

16

17   ISSUES

18   The following issues have been raised in the present appeal.

19   1.   Whether the Appellant has shown that the Examiner erred in

20   rejecting claims 1, 2, 4-9, 14-17 and 19 as unpatentable over Øhrn and

21   Stanis.

22   2.   Whether the Appellant has shown that the Examiner erred

23   in rejecting claims 3, 10 and 18 as unpatentable over Øhrn, Stanis and

24   Bruno.

25

1   FINDINGS OF FACT

2   The record supports the following findings of fact (FF) by a

3   preponderance of the evidence.

4   1.   Øhrn describes a computer-based method and system for

5   reserving a room for a hotel or for admissions to a hospital (col. 1, ll. 6-39;

6   col. 10. ll. 22-30). The system uses a communication network I and includes

7   a central data processing device with a database (fig. 1) into which room

8   availability information for a plurality of facilities is inputted and updated

9   (i.e., means for inputting room availability information) (col. 4, ll. 10-20;

10   col. 5, ll. 47-63; fig. 1). In the system of Øhrn, the user inputs information

11   such as location and date into a user terminal (i.e., means for inputting

12   information of the patient) that can include a display for displaying

13   alphanumeric and graphic information (col. 6, ll. 8-24 and 37-46; col. 7, ll.

14   3-15; figs. 8-10). Upon receiving the user input information, the central data

15   processing device accesses and searches the database to determine room

16   availability, and matching facilities are presented to the user (i.e., means for

17   searching, means for comparing and means for determining) (col. 5, ll. 37-

18   42; col.7, ll. 27-37).

19   2.   Øhrn does not specifically describe that the method includes

20   inputting medical condition information of the patient into the database or

21   matching the medical condition to one of the types of medial care in order to

22   determine the availability of beds from the bed availability information.

23   3.   Stanis describes a bed allocation data handling system for a

24   hospital that provides status and nursing station information for the beds of

1   the hospital so that such information can be used to search for beds (col. 3,

2   ll. 14-25; col. 21, ll. 29-34).

3

4   PRINCIPLES OF LAW

5   "Section 103 forbids issuance of a patent when 'the differences

6   between the subject matter sought to be patented and the prior art are such

7   that the subject matter as a whole would have been obvious at the time the

8   invention was made to a person having ordinary skill in the art to which said

9   subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727,

10 1734 (2007). The question of obviousness is resolved on the basis of

11 underlying factual determinations including (1) the scope and content of the

12 prior art, (2) any differences between the claimed subject matter and the

13 prior art, (3) the level of skill in the art, and (4) where in evidence, so-called

14 secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18

15 (1966). In *KSR*, the Court explained that "[o]ften, it will be necessary for a

16 court to look to interrelated teachings of multiple patents; the effects of

17 demands known to the design community or present in the marketplace; and

18 the background knowledge possessed by a person having ordinary skill in

19 the art, all in order to determine whether there was an apparent reason to

20 combine the known elements in the fashion claimed by the patent at issue."

21 *KSR,* 127 S.Ct. at 1740-41.

22   The Court further explained:

23   When a work is available in one field of endeavor,
24   design incentives and other market forces can

1   prompt variations of it, either in the same field or a
2   different one. If a person of ordinary skill can
3   implement a predictable variation, §103 likely bars
4   its patentability. For the same reason, if a
5   technique has been used to improve one device,
6   and a person of ordinary skill in the art would
7   recognize that it would improve similar devices in
8   the same way, using the technique is obvious
9   unless its actual application is beyond his or her
10   skill.

11   *Id.* at 1740.

12   The Court noted that "[t]o facilitate review, this analysis should be

13 made explicit." *Id.* at 1741, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir.

14 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere

15 conclusory statements; instead, there must be some articulated reasoning

16 with some rational underpinning to support the legal conclusion of

17 obviousness"). However, "the analysis need not seek out precise teachings

18 directed to the specific subject matter of the challenged claim, for a court

19 can take account of the inferences and creative steps that a person of

20 ordinary skill in the art would employ." *KSR,* 127 S.Ct. at 1741.

21

22   ANALYSIS

23   <u>Claims 1, 2, 4-9, 14-17 and 19</u>

24   The Examiner rejects independent claims 1 and 14 stating that Øhrn

25 discloses most of the limitations recited therein, but concedes that Øhrn does

26 not specifically describe entering the individual medical condition of a

27 patient or matching the bed to the medical condition of a patient (FF 1 and 2;

1   Ans. 3). However, the Examiner finds that Stanis describes searching for

2   available beds and information related thereto for the benefit of managing

3   the status of beds in a hospital (FF 3; Ans. 4). In this regard, the Examiner

4   articulates that it would have been obvious to one of ordinary skill in the art

5   to match patient condition to available beds in the invention of Øhrn as

6   taught by Stanis "for the benefit of accurately placing patients in the correct

7   ward" of the hospital (Ans. 4).

8

9   *Claims 1, 2, 4-9*

10   Initially, in turning to the Appellant's arguments, we find the

11   numerous arguments that the prior art teaches away from the claimed

12   invention (App. Br. 14, 16 and 17) to be unpersuasive. Mere description of

13   an implementation in the prior art that differs from the Appellant's claimed

14   invention, without more, does not show that the prior art is "teaching away"

15   from the invention claimed. *See In re Fulton,* 391 F.3.d 1195, 1201 (Fed.

16   Cir. 2004). We also disagree with the Appellant's contention that Øhrn is

17   not in the same field of endeavor as Stanis (Reply Br. 6) because Øhrn

18   clearly discloses the use of the described method and system for admissions

19   to a hospital, which of course, is a healthcare facility (FF 1). We further find

20   unpersuasive, the Appellant's argument that the combination of Stanis and

21   Øhrn fails to describe a plurality of healthcare providers as recited in claim 1

22   (Reply Br. 5) because Øhrn clearly describes a system having information

23   for a plurality of facilities (FF 1).

1   Nonetheless, we do not find that combining Øhrn and Stanis in the

2   manner suggested by the Examiner results in the method recited in claim 1.

3   We agree with the Examiner's contention that providing a modern web

4   interface to the back office system of Stanis would have been obvious (Ans.

5   6), and we also find that Stanis describes searching and matching of beds

6   using bed information (FF 3). However, the described searching and

7   matching of facilities in Øhrn does not relate to the medical condition of the

8   patient or to the type of medical care as recited in claim 1. This deficiency is

9   not remedied by the Examiner's application of the teachings of Stanis.

10   When Øhrn is modified based on the teachings of Stanis in the manner

11   suggested by the Examiner, the combination results in matching of the

12   patient's medical condition and corresponding bed assignment within a

13   particular hospital facility, but the matching and bed assignment does not

14   extend beyond the particular facility. In other words, in our view, the

15   combination of Øhrn and Stanis as suggested by the Examiner results in

16   identifying one or more hospital facilities that have available beds based

17   upon the input of the user (e.g., location), selecting the desired facility, and

18   assigning a bed in a ward of the selected hospital based on the medical

19   condition of the patient. We do not equate this resultant combination as

20   satisfying the recitations of claim 1 which requires matching the medical

21   condition of the patient to a type of medical care to obtain bed availability

22   information of a plurality of facilities.

23   The Examiner's statement that it is well known fact that hospitals

24   have different wards for providing different types of medical care to patients

1   (Ans. 6) is duly noted, but the Examiner does not articulate a rational reason

2   as to why one of ordinary skill in the art would be motivated to extend this

3   fact to assign beds in wards of a plurality of different hospitals which have

4   their own different wards that provide various types of medial care. Thus,

5   we find that the combination of Øhrn and Stanis, as applied by the

6   Examiner, does not describe the claimed method. Moreover, we find the

7   Examiner's articulated reason for combining these references, namely, "for

8   the benefit of accurately placing patients in the correct ward" (Ans. 4 and 6),

9   without more, is insufficient to overcome the noted deficiency of the

10   combination. *See KSR*, 127 S.Ct. at 1741. Hence, we do not sustain the

11   Examiner's rejection of independent claim 1. In view of the above, we also

12   do not sustain the Examiner's rejection of claims 2 and 4-9 that depend from

13   independent claim 1, and we need not specifically address the Appellant's

14   arguments directed to these dependent claims (App. Br. 23-29).

15

16   *Claims 14-17 and 19*

17   With respect to independent claim 14, the Appellant presents

18   substantially similar arguments (App. Br. 17-21) as those presented relative

19   to independent claim 1 discussed *supra*. In this regard, the Appellant

20   contends that neither Øhrn nor Stanis, alone or in combination, describe a

21   means for inputting bed availability information of a plurality of healthcare

22   facilities, a means for searching the database, or a means for inputting

23   information of the patient into a form via the computer network (App. Br.

24   18). However, the Appellant's argument is not persuasive in that Øhrn

1　describes these limitations (FF 1; Ans. 4 and 5). The Appellant's argument

2　distinguishing "hotel room vacancy" of Øhrn from hospital bed availability

3　(Reply Br. 6) is unpersuasive because Øhrn clearly describes applicability to

4　hospitals which are healthcare facilities (FF 1). Moreover, the Appellant

5　does not provide any convincing argument that the recited "bed availability

6　information" is distinguishable from room availability information used by

7　the system and method of Øhrn.

8　　　The Appellant also argues that claim 14 requires a means for inputting

9　patient's medical data because claim 14 further recites a means for

10　comparing the patient information to appropriate healthcare facilities, and

11　the claimed system would not be capable of determining the appropriate

12　patient treatment facilities without any information regarding the medical

13　condition of the patient (Reply Br. 7). Thus, the Appellant contends that the

14　neither Øhrn nor Stanis, taken singly or in combination, describes the recited

15　system of claim 14 in which information regarding the medical condition of

16　the patient is inputted (App. Br. 18 and 19; Reply Br. 7).

17　　　However, the Appellant's argument is not persuasive because it is not

18　based on limitations appearing in the claims. *See In re Self*, 671 F.2d 1344,

19　1348 (CCPA 1982). As noted by the Examiner, the apparatus claim 14

20　merely recites "information of the patient" which is broader than the

21　limitation "medical condition of the patient" as now argued by the Appellant

22　(Ans. 4). During prosecution, claims are to be given their broadest

23　reasonable construction in light of the specification as it would be

24　interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech.*

1 *Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). When the broadest reasonable

2 construction of the term "information of the patient" is applied, the

3 geographical information, time of travel and/or price limits inputted by the

4 user into the system of Øhrn clearly satisfy the recited "information of the

5 patient" limitation. Øhrn also describes comparing the inputted information

6 with the information in the database to determine room availability of a

7 plurality of facilities thereby satisfying the remaining structural limitations

8 recited in claim 14 (FF 1).

9   The Appellant further contends that the cited prior art references fail

10 to describe or teach that the bed availability information includes a quantity

11 of beds available, types of beds available, and projection of expected

12 availability of beds as specifically recited in dependent claims 15-17,

13 respectively (App. Br. 34). The Appellant cites *In re Gulack* which states

14 that the "differences between an invention and the prior art cited against it

15 cannot be ignored merely because the differences reside in the content of the

16 printed matter," and that the claim must be read as a whole. *In re Gulack*,

17 703 F.2d 1381, 1385 (Fed. Cir. 1983). However, the Appellant fails to

18 appreciate that *In re Gulack* also states "[w]here the printed matter is not

19 functionally related to the substrate, the printed matter will not distinguish

20 the invention from the prior art in terms of patentability. Although the

21 printed matter must be considered, in that situation it may not be entitled to

22 patentable weight." *Id.*

23   While the Appellant asserts that the specific information recited in

24 claims 15-17 cannot be ignored because "some of the differences between

1   Appellant's system relate to the content of information," and differences

2   between the invention and the combination of Øhrn and Stanis are

3   significant (App. Br. 35), no detailed arguments are presented as to how the

4   specific information recited in these dependent claims relate to the claimed

5   system or components thereof. The appealed claims 15-17 merely recite that

6   the bed availability information includes specific information rather than

7   functionally relate the recited specific types of information to the structural

8   components of the system claimed. Thus, in our view, claims 15-17 merely

9   recite non-functional descriptive material which cannot render non-obvious

10   an invention that would have otherwise been obvious. *See In re Ngai*, 367

11   F.3d 1336, 1339 (Fed. Cir. 2004).

12   With respect to dependent claim 19, the Appellant's argument that the

13   cited prior art does not include a means for accessing the database where a

14   facility enters the bed availability into the database is not persuasive because

15   Øhrn clearly teaches facilities updating of the database to accurately reflect

16   current room availability (FF 1).

17   In view of the above, we find that the Appellant has not shown that

18   the Examiner erred in rejecting the apparatus claims 14-17 and 19 as

19   unpatentable over Øhrn and Stanis.

20

21   Claims 3, 10 and 18

22   The Examiner rejected these dependent claims under 35 U.S.C.

23   § 103(a) as unpatentable over Øhrn, Stanis and Bruno. With respect to

24   method claims 3 and 10 that depend from independent claim 1, Examiner's

1   application of Bruno does not cure the deficiency of Øhrn and Stanis

2   discussed *supra*. Therefore, we do not sustain the Examiner's rejection of

3   claims 3 and 10.

4   With respect to the apparatus claim 18 that depends from independent

5   claim 1, the Appellant's argument that Bruno fails to describe the recited

6   remote server (App. Br. 38) is not well taken because a remote server is

7   described in Bruno (numeral 50; fig. 1A) as well as in Øhrn (fig. 1). In

8   addition, the Examiner articulates that it would have been obvious to utilize

9   the Internet as a less expensive alternative to the long distance service

10   described in the combination of Øhrn and Stanis (Ans. 5 and 6). We find the

11   Examiner's articulated reason to be rational and conclude that it would have

12   been obvious to one of ordinary skill in the art to provide a website on the

13   internet for implementing the combined system of Øhrn and Stanis. *See*

14   *KSR,* 127 S.Ct. at 1741. In this regard, we further note that updating of a

15   prior art system using a technique already known in the art (such as website

16   implementation) is obvious to one of ordinary skill in the art unless its actual

17   application is beyond his or her skill. *Id.* at 1740; *see also Leapfrog Ent.,*

18   *Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007). Therefore,

19   the Appellant has not shown that the Examiner erred in rejecting claim 18.

20

21   CONCLUSIONS

22   1.   The Examiner erred in rejecting claims 1, 2 and 4-9 as

23   unpatentable over Øhrn and Stanis.

1   2.   The Appellant has not shown that the Examiner erred in

2   rejecting claims 14-17 and 19 as unpatentable over Øhrn and Stanis.

3   3.   The Examiner erred in rejecting claims 3 and 10 as

4   unpatentable over Øhrn, Stanis and Bruno.

5   4.   The Appellant has not shown that the Examiner erred in

6   rejecting claim 18 as unpatentable over Øhrn, Stanis and Bruno.

7

8   ORDERS

9   1.   The Examiner's rejections of claims 14-19 are AFFIRMED.

10   2.   The Examiner's rejections of claims 1-10 are REVERSED.

11   No time period for taking any subsequent action in connection with

12 this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. §

13 1.136(a)(1)(iv) (2007).

14

15   AFFIRMED-IN-PART

16
17

18 ack

19 cc:

20

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